

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ALNYLAM PHARMACEUTICALS, INC.,

Plaintiff,

v.

MODERNA, INC., MODERNATX, INC.,
and MODERNA US, INC.,

Defendants

C.A. No. 22-cv-335-CFC
CONSOLIDATED

JURY TRIAL DEMANDED

**DEFENDANTS' NOTICE OF SUBSEQUENT DEVELOPMENTS
IN SUPPORT OF THEIR PARTIAL MOTION TO DISMISS
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6)**

Defendants Moderna, Inc., ModernaTX, Inc., and Moderna US, Inc. (collectively "Moderna") file this notice of subsequent developments under District of Delaware Local Rule 7.1.2(b) to advise the Court of the United States Government's interest in Moderna's pending Motion to Dismiss under 28 U.S.C. § 1498. *See* D.I. 11 (Moderna's motion).

In *Arbutus Biopharma Corp. v. Moderna, Inc.*, C.A. No. 22-252 (D. Del.), the Government has filed a statement of interest in support of Moderna's Section 1498 motion, which is based on the same government contract at issue in the motion in this case. *Id.* at D.I. 49 (attached hereto as Exhibit 1). Therein, the Government states that the claims targeted by Moderna's motion "should be dismissed," Ex. 1 at

3, because Moderna had the Government’s “authorization and consent” to manufacture and use patented inventions, and Moderna’s manufacture and sale of COVID-19 vaccine was “for the Government,” Ex. 1 at 13. The same reasoning applies here.

DATED: February 15, 2023

FARNAN LLP

OF COUNSEL:

GIBSON, DUNN & CRUTCHER LLP

Jane M. Love, Ph.D.

Robert W. Trenchard

Emil N. Nachman

200 Park Avenue

New York, New York 10166

(212) 351-4000

JLove@gibsondunn.com

RTrenchard@gibsondunn.com

ENachman@gibsondunn.com

/s/ Brian E. Farnan

Brian E. Farnan (Bar No. 4089)

Michael J. Farnan (Bar No. 5165)

919 N. Market Street, 12th Floor

Wilmington, Delaware 19801

(302) 777-0300

(302) 777-0301

bfarnan@farnanlaw.com

mfarnan@farnanlaw.com

Anne Y. Brody

3161 Michelson Drive

Irvine, CA 92612

(949) 451-3800

ABrody@gibsondunn.com

Shuo Josh Zhang

1050 Connecticut Avenue, N.W.

Washington, DC 20036-5306

(202) 955-8270

SZhang@gibsondunn.com

Attorneys for Moderna, Inc.,

ModernaTX, Inc., and Moderna US, Inc.